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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Amendment of Section 73.202(b),	) MM Docket No. 00-148
Table of Allotments	) RM-9939
FM Broadcast Stations	) RM-10198
(Quanah, Archer City, Converse, Flatonia,	)
Georgetown, Ingram, Keller, Knox City,	)
Lakeway, Lago Vista, Llano, McQueeney,	)
Nolanville, San Antonio, Seymour, Waco and	)
Wellington, Texas, and Ardmore, Durant,	)
Elk City, Healdton, Lawton and Purcell,	)
Oklahoma.)	)

To: The Hon. Peter H. Doyle
Chief, Audio Division
Media Bureau

OPPOSITION OF CHARLES CRAWFORD TO PETITION FOR PARTIAL RECONSIDERATION AND REQUEST FOR EXPEDITED ACTION

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SUMMARY

The imperious demanding tone of the Joint Parties' petition to the tenor and effect that the Commission must grant the relief they request is not useful to an understanding and disposition of the issues.

The decision to dismiss the Joint Parties' counterproposal in the Quanah proceeding is well reasoned. Nothing in the Joint Parties' petition provides grounds for the Commission to grant the relief requested.

The cases cited by the Joint Parties reflect day to day operational aspects of the agency's allotment work including converting a counterproposal into a separate rulemaking proceeding where the circumstances warrant. However, in so doing in those cases, the Commission always sees to it that public notice of the separate proceeding is given to the end that members of the public will have the requisite opportunity to know about and comment on the counterproposal. None of the cases remotely supports the wild claim that pieces of the Joint Parties' mammoth Quanah counterproposal of their choosing should or legally can be separated out and granted "nunc pro tunc" dating back nearly three years obliterating intervening allotment activity that may have taken place.

We again press the Commission - in support of its decision and in defense against the Joint Parties' petition for reconsideration - to hold that the subject counterproposal

violates the mandate of the Administrative Procedure Act that the end result of a rulemaking proceeding must be a logical outgrowth of the notice of proposed rulemaking. The force of that argument is vastly stronger now than when we made the argument previously.

Previously, the labywrinthine trail from the Quanah notice to the end result, while following some 17 steps across Oklahoma and Texas, at least purportedly had some nexus between each step. The Joint Parties now request severance and grant of a major portion of the counterproposal which <u>never</u> had any nexus tying back to the Quanah notice. Such a request <u>on a nunc pro tunc</u> basis, by its very terms and conditions, cannot possibly pass the logical outgrowth test under the Adminstrative Procedure Act.

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1. The referenced pleading (the "Petition") filed by Rawhide Radio, LLC, Capstar TX Limited Partnership and Clear Channel Broadcasting Licenses, Inc. (the "Joint Parties") is without merit.

I.
Misguided lecture to the Commission that it is required to consider the merits of the Joint Parties' so-called Proposal
(Petition at ¶3)

2. According to the Joint Parties, the Commission is powerless to refuse to address the merits of its so-called Proposal, citing Section 553(e) of the Administrative Procedure Act. Apparently, the Joint Parties didn't read the statute. It reads as follows:

> Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the

> denial is self-evident, the notice shall be accompanied by a brief statement of the grounds for denial.

5 U.S.C. §553(e). In the Commission's Report and Order to which the Petition is directed, that is precisely what the Joint Parties got. An explanation of the reasons why the Commission would not give nunc pro tunc consideration (a wildly inappropriate largess to the Joint Parties about which we will have more to say later) of the merits of their so-called Proposal citing rules and reasons for that action.

3. The Joint Parties' lecture that the Commission cannot fail to consider its so-called Proposal unless it is patently defective cites Municipal Light Boards v. FPC, 450 F.2d 1341 (D.C.Cir. 1971), without mentioning that the case involved a regulation of the Federal Power Commission to allow that agency to summarily reject a filing, without even brief statements of the grounds for its action, which "patently fails to substantially comply with" FPC regulations. 18 C.F.R. §35.5. Of course there is no such FCC regulation at work here but if there were, a good case could be made in support of rejection of the Joint Parties' so-called Proposal based thereon.

4. The Joint Parties' lecture that the Commission is powerless to fail to consider the merits of their so-called Proposal also cites National Org. for the Reform of Marijuana Laws v. Ingersoll, 497 F.2d 654 (D.C.Cir. 1974). There is nothing in that decision which says the agency in question, the Bureau of Narcotics and Dangerous Drugs, was powerless to do or not do anything. The court reviewed the facts and circumstances

of the case and sided with the petitioning party that the agency should have proceeded with a rulemaking proceeding rather than deciding not to conduct such a proceeding. Here, the FCC is not telling the Joint Parties that they cannot file a petition for rulemaking to seek allotments of their desire and choosing; indeed, they are more than free to do so. Rather, the Commission is telling the Joint Parties that they cannot carve out a portion of a controverted and flawed Counterproposal in a rulemaking proceeding filed nearly three years ago and obtain a grant of their desired piece of that Counterproposal nunc pro tunc inconsistently with agency rules and policies and without regard to allotment activities during the intervening nearly three years.

5. That Commission action was eminently correct, to which we now turn our attention.

II.
Administrative Procedure Act's requirement of notice to the public in rulemaking proceedings would be violated if the so-called Proposal of the Joint Parties were granted

6. For reasons which we have already laid out in some detail in our previous pleadings, the Administrative Procedure Act would have been violated big time if the Joint Parties' counterproposal were to have been approved.[1] We must try the Commission's patience by interposing those arguments here yet again, because the APA violation we have previously noted would

[1] Applications for Review relative to Benjamin and Mason, Texas (dated February 4, 2003), Evant and Harper, Texas (dated April 14, 2003).

be vastly worse if the relief sought in the Joint Parties' petition for reconsideration were to be granted.

A.
The labywrinthine trail from Quanah to here is vastly worse than before

7. The reader will recall that the captioned rulemaking proceeding was begun with the filing of a petition to allot channel 233C2 at Quanah, Texas, located near the Texas Panhandle in the northwestern part of the state. The Commission's notice of proposed rulemaking identified Marie Drischel residing in Big Creek, Mississippi as the party who filed the petition to commence the rulemaking proceeding regarding Quanah.

8. The Quanah petition did not mention -- and perforce the FCC public notice did not mention -- any other community or the fact that for a long time previously, dating back to 1998, a counterproposal had been conceived, developed and prepared -- and was going to be filed on the comment date -- by the Joint Parties, major group broadcasters, having interests in many hundreds of radio stations including numerous stations throughout Texas.

9. All Mr. Crawford or any other members of the public knew from the agency's rulemaking public notice was that Ms. Dreschel proposed to allot and file for a new radio station near the Texas Panhandle in Quanah on the channel that she had specified. The labywrinthine trail leading to the conflicts in the so-called Proposal advanced by the Joint Parties in their Petition is this:

(a) Step one: The trail begins with a proposal to move

existing FM channel 248C2 at Durant, Oklahoma, to a small town named Keller, Texas, imbedded in the heart of the Dallas-Fort Worth metropolitan area, the nation's sixth largest radio market, for which an upgrade to a fully powered channel 248C was proposed. Joint Parties' Counterproposal at 5-13.

(b) Step two: In order to do that, a radio station in Archer City, Texas, would have to change from channel 248C1 to channel 230C1. Counterproposal at 13.

(c) Step three: In order for the Archer City station to do that, a radio station in Seymour, Texas would relinquish its authorized upgrade from a Class A channel to channel 230C2 and change to channel 222C2. Counterproposal at 14.

(d) Steps four, five and six: In order for the Seymour station to do that, three authorized, but vacant allotments would be changed, one in Seymour, one in Wellington, Texas, and one in in Knox City, Texas. Counterproposal at 15.

(e) Step seven: In order for the Archer City reallotment to happen (step two), a radio station in Lawton, Oklahoma, would change from channel 231C2 to channel 232C2. Counterproposal at 15.

(f) Step eight: In order for the Lawton reallotment to happen, a radio station in Elk City, Oklahoma, would change from channel 232C3 to 233C3, creating a conflict with Ms. Dreschel's petition to allot channel 233 to Quanah, down the road aways from Elk City. Counterproposal at 15-16.

(g) Step nine: Return again to step two, the Archer

City reallotment. For that to happen, in addition to the steps already mentioned, a radio station in Healdton, Oklahoma, would move and change its community of license to Purcell, Oklahoma. Counterproposal at 16-18.

(h) Step nine brought the labyrinthine trail to the brink of a precipice overlooking a regulatory Grand Canyon. Moving the radio station out of Healdton would leave the community without a local outlet, an FCC no-no.

(i) Not to worry. Labyrinthine trail blazers are an inventive lot. Enter step ten: a radio station in Ardmore, Oklahoma, would give up its license in that larger community and adopt Healdton as its community of license, a highly unusual 307(b) maneuver which the Joint Parties refer to as "the Ardmore/Healdton" proposal. Counterproposal at 18-19.

(j) We now reach the so-called Proposal of the Joint Parties being advanced in their Petition. While it appeared from the Counterproposal that there was a continuing link in the steps, as we now understand the situation, that was not the case. So, it turns out that the labywrinthine trail blazer having set its compass starting at Quanah, would, at this fork in the road, perhaps through divine intervention, foresee a disconnected further chain of allotments adversely affecting interested citizens whose only clue was the Quanah public notice.

(k) Step eleven. The fresh labywrinthine trail begins with a radio station in Waco, Texas, that would downgrade from channel 248C to channel 247C1 and change its community of license

to Lakeway, Texas, a small community near Austin, Texas. In the process, the station, owned by Joint Parties' Capstar TX, would upgrade its commercial location from Waco, the 193rd radio market, to Austin, the 49th radio market. Counterproposal at 19-24.

(l) Step twelve: For the Waco/Lakeway changes to occur, a San Antonio radio station would downgrade from channel 247C to 245C1. Counterproposal at 24. This step conflicts with a petition for allotment of channel 245C3 at Tilden, Texas, filed two years ago in May 2001. Petition, Exh. A. The Tilden channel (245) bears no relationship to the Quanah channel (233) and Tilden is located at least 350 miles from Quanah.

(m) Step thirteen. A radio station in Georgetown, Texas, proposes to downgrade from channel 244C1 to 243C2 and change the community of license to Lago Vista, Texas, another small community near Austin, Texas. This would improve the commercial position of the station, owned by the Joint Parties' Clear Channel Broadcast Licenses, Inc., as a second move-in to the Austin radio market. Counterproposal at 24-29. This step conflicts with a petition for allotment of channel 243A at Evant, Texas filed two years ago in June, 2001. Petition, Exh. A. The Evant channel bears no relationship with the Quanah channel (233). Evant is located some 200 miles from Quanah.

(n) Step fourteen: For the Waco/Lakeway/Georgetown changes to occur, channel 256A would have to be substituted for channel 243A at Ingram, Texas. Counterproposal at 25, ¶44. This

step conflicts with a petition for allotment of channel 256A at Harper, Texas filed two years ago in May 2001. Petition, Exh. A. The Harper channel bears no relationship with the Quanah channel (233). Harper is located some 200 miles from Quanah.

(o) Step fifteen: Also for the Waco/Lakeway/Georgetown changes to occur, a radio station in Llano, Texas, would move its transmitter location and change from channel 242A to channel 297A. Counterproposal at 29. This step conflicts with a petition for allotment of channel 297A at Goldthwaite, Texas filed two years ago in May 2001. Petition, Exh. A. The Goldthwaite channel bears no relationship with the Quanah channel (233). Goldthwaite is located some 200 miles from Quanah.

(p) Step sixteen: In order for the Llano reallotment to happen, a radio station in Nolanville, Texas, would change from channel 297A to channel 249A. Counterproposal at 29-30.

(q) Step seventeen: In order for the Nolanville station's channel change to happen, a radio station in McQueeney, Texas, would change its transmitter site and relocate from McQueeney to Converse, Texas. This was the second precipice overlooking the regulatory grand canyon of an FCC no-no removing the only local outlet for McQueeney, a community located outside any metropolitan area. The choice, here, was a dreadful one that no right-thinking follower of the labyrinthine trail would have anticipated as a legitimate public interest proposal, i.e., removing the only local outlet in favor of awarding -- to one of the Joint Parties who owns the McQueeney station, Rawhide Radio,

L.L.C. -- still another high powered FM station in the San Antonio radio market, the nation's 32nd largest. Counterproposal at 30-35.

(r) The untenable step seventeen conflicts with a petition to allot 249C3 at Mason, Texas and a petition to allot channel 250A at Batesville, Texas, both filed two years ago in May 2001. Petition, Exh. A. Neither channel bears any relationship with the Quanah channel (233). Mason is located some 200 miles from Quanah; Batesville is located at least 300 miles from Quanah.

(s) Step eighteen is an allotment of channel 232A to Flatonia, Texas. Counterproposal at 35-36. This step conflicts with a petition to allot channel 232A at Shiner, Texas, filed more than two years ago in April 2001. Petition, Exh. A. It also conflicts with a petition to allot the same channel at Victoria, Texas filed in October 2002. Id. The channel bears no relationship with the Quanah channel (233). Shiner and Victoria are located in the range of 350 to 400 miles from Quanah.

B.
Analysis of Commission precedent
under the APA requirement

10. The Administrative Procedure Act requires the Commission to publish in the Federal Register notice of a proposed rule in order to allow interested persons to file comments reflecting their interests. 5 U.S.C. §553(b)(3). The final rule must be a logical outgrowth of the proposed rule. Unless persons are sufficiently alerted to know whether their

interests are at stake, the public notice is unlawful. National Black Media Coalition v. FCC, 791 F.2d 1016, 1023 (2d Cir. 1986); Weyerhaeuser Company v. Costle, 590 F.2d 1011 (D.C.Cir. 1978); Owensboro on the Air v. United States, 262 F.2d 702 (D.C.Cir. 1958) (public notice upheld as meeting the "logical outgrowth test" in TV allotment proceeding involving a distance of 95 miles to a neighboring market; and agency common-law rulings Pinewood, South Carolina, 5 FCC Rcd 7609 (1990) (adequate notice to the public upheld in FM proceeding involving a distance of 17 miles); Medford and Grants Pass, Oregon, 45 RR2d 359 (1979) (adequate notice to the public upheld in TV proceeding involving distance of 27 miles); Pensacola, Florida, 62 RR2d 535 (MM Bur. 1987) (adequate notice to the public upheld in an FM proceeding involving distance of less than 10 miles); Toccoa, Sugar Hill, and Lawrenceville, Georgia, DA 01-2784 (MM Bur. 2001) (the "logical outgrowth test" was not satisfied in an FM proceeding involving a distance of 13 miles).

11. There is no way -- legally or rationally -- that the Commission's public notice of the Quanah allotment rulemaking proceeding can be deemed to apprise the public of alternative allotments across the State of Texas and much of the State of Oklahoma affecting either the first leg of the labywrinthine trail, i.e., Durant, Oklahoma, Keller, Texas, Archer City, Texas, Seymour, Texas, Wellington, Texas, Knox City, Texas, Lawton, Oklahoma, Elk City, Oklahoma, Healdton, Oklahoma, Ardmore, Oklahoma, or the second leg of the labywrinthine trail, Waco,

Texas, Lakeway, Texas, San Antonio, Texas, Georgetown, Texas, Llano, Texas, Nolanville, Texas, McQueeny, Texas, Converse, Texas, Ingrim, Texas, and Flatonia, Texas, or the combination of the two as required for a rational evaluation of the so-called Proposal advanced by the Joint Parties here.

12. Instances of rulemaking proceedings involving multiple allotments do not support the Joint Parties here, i.e.: Farmersville, Texas, et al, 12 FCC Rcd 12056 (MM Bur. 1997); Cross Plains, Texas, et al, 15 FCC Rcd 5506 (MM Bur. 2000); and Ardmore, Alabama, et al, 17 FCC Rcd 16332 (MM Bur. 2002):

(a) In Farmersville, the initial petitioner continued to headline the rulemaking proceeding and secured the allotment for which it had filed. Three sets of counterproposals were filed by other parties and the Bureau sorted out their respective positions making allotments in 12 communities in Texas and three communities in Oklahoma. From the public record, it appears that the parties' interests were resolved to their mutual satisfaction, there was no adversely affected party who sought to litigate the matter following the ruling of the Bureau on a petition for reconsideration (unrelated to the issues here), and to our knowledge the case was did not reach the Commission level for review.

(b) In Cross Plains, the initial petitioner remained in the proceeding in which counterproposals were filed by three other parties, two of whom proposed alternate allotments conflicting with the petitioner's allotment and during the course of the

proceeding following pleadings regarding that matter, the petitioner withdrew. The ultimate result was allotments affecting 36 communities in Oklahoma and Texas. From the public record, it appears that the parties' interests were resolved to their mutual satisfaction, there was no adversely affected party who sought to litigate the matter following issuance of the Bureau's Report and Order, and to our knowledge the case did not reach the Commission level for review.

(c) In Ardmore, the initial petition was jointly presented by major group broadcasters (Capstar, Jacor and Clear Channel) proposing eight allotments, some counterproposals were submitted, and the Bureau sorted things out making a total of 13 allotments in Alabama, Mississippi and Tennessee. A petition for reconsideration is currently pending by two parties to the proceeding raising issues not on point here.

13. None of these Bureau actions purports to relate to or deal with notice requirements under the Administrative Procedure Act. That subject didn't come up. It was not addressed in the Reports and Orders or in the Bureau's decisions disposing of petitions for reconsideration. There was no aggrieved citizen whose APA notice rights were violated or, if there were, the aggrieved party did not raise the issue. These cases are public examples of the fact that multi-party multi-state allotment proceedings may occasionally arise with the concurrence of the participating parties. They do not stand for anything more than that. They are not generic APA-sanctioned notices that allotment

petitioners must be prepared to accept the consequences of any multi-party multi-state counterproposal that might come their way. They are not part of the agency common law regarding notice requirements in allotment proceedings under the Administrative Procedure Act.

14. When we return to that common law and related court holdings set forth earlier, the spacings between Quanah and Mason, Tilden, Batesville, Harper, Goldthwaite, Evant and Victoria, Texas, ranging from 200 to 400 miles dwarf the spacings supporting a finding of "logical outgrowth" in the FM allotment holdings in Pinewood (17 miles) and Pensacola (ten miles or less). In Taccoa, the Bureau did not find a "logical outgrowth" even though the relevant communities were within 13 miles of each other. In allotment proceedings involving television channels and markets, where distances are likely to be greater than in FM, "logical outgrowth" was found in Owensboro involving channel changes in markets 95 miles apart and in Medford and Grants Pass involving channel changes in communities 27 miles apart.

15. For the benefit of the Commission and its staff residing in the local area, if an allotment petition for an FM station in Washington, D.C. is exposed to ABA-sanctioned notice of a potential for conflicting petitions as far away as 400 miles, the exposure would be measured by an arc starting in the vicinity of Boston, Massachusetts, thence to Albany, New York, thence to Cleveland, Ohio, thence to Lexington, Kentucky, thence to Charlotte, North Carolina, thence to Charleston, South

Carolina.

16. This is much of the entire eastern United States. Section 307(b) principles in FM allotment proceedings are vastly more refined than that and parties who file and prosecute the rulemaking petitions essential to the implementation of Section 307(b) are entitled to commensurate notice protection under the Administrative Procedure Act. When that is done, based on the agency's history of common law rulings with respect to "logical outgrowth" in allotment rulemaking proceedings, 200 to 400 mile spacings at issue here do not even come close to invoking APA sanctioned notice under the "logical outgrowth" test. While consensual multi-party multi-state allotment proceedings have their place in the allotment process, they are not above the law and cannot run roughshod over APA notice rights of adversely affected petitioners.

III.
The wild largess sought by the Joint Parties of granting portions of their Quanah counterproposal of their choosing "nunc pro tunc" to wipe out intervening allotment activities is unconscionable
(Petition at ¶¶4-6)

17. The Joint Parties lecture the Commission that this "must be done." Petition at ¶6. The customary protocol is that such a governmental judgment is for the Commission and its staff to make. The agency's decision to which the Petition is directed decided to the contrary for good and sufficient reasons. Neither the cases cited in the Petition nor the effort to enlist sympathies for the Joint Parties is well taken.

A.

Cases cited by the Joint Parties
do not remotely support such largess
(Petition at ¶5)

18. The cases cited by the Joint Parties do not remotely support the wild "nunc pro tunc" grant of their so-called Proposal instead of putting that proposal on public notice for comment by interested parties.

(a) In Noblesville, Indianapolis and Fishers, Indiana, DA 03-1118 (Med.Bur. 2003), the petitioning parties sought to modify the initial rulemaking proposal while it was pending and the Commission declined to do so; rather, it issued a new notice of proposed rulemaking "to insure that the public will have an opportunity to participate fully" in commenting on the modified proposal. The three communities were within 30 miles of each other.

(b) In Saratoga, Wyoming, et al, 15 FCC Rcd 10358 (MM Bur. 2000), the Commission noted that with respect to three interrelated allotment proceedings the same parties participated in the proceedings and accordingly had actual notice of actions being taken. After such actions had been taken, there remained an unresolved counterproposal which the Commission determined "will be treated as a new petition for rulemaking in a separate proceeding." Hence calling for public comment. The communities that were involved in the initial rulemaking, Saratoga and Green River, Wyoming, were approximately 110 miles apart; the subject counterproposal, put out as a fresh allotment proceeding, related to Big Piney and La Barge, Wyoming, within 20 miles of each

other.

(c) In Alva, Oklahoma, et al, 11 FCC Rcd 20915 (MM Bur. 1996), Party A filed a petition to allot a channel to Community A (Deerfield, Missouri), Party B filed a counterproposal proposing a conflicting allotment to Community B (Bartlesville, Oklahoma), Party A did not pursue its petition in the proceeding, Party B did, and the Commission granted the counterproposal of Party B? What is new or noteworthy here about that? Bartlesville and Deerfield are estimated to be about 80-100 miles apart.

(d) In Oakdale and Campti, Louisiana, 7 FCC Rcd 1033 (MM Bur. 1992), a station seeking to upgrade its FM facility lost to a competing allotment to establish a first local service; however, the Commission could and did place its petition in a separate rulemaking docket containing another allotment which did not conflict with the upgrade; thus, resolving the allotment situation for all three parties before it. In the separate docket, as in the initial docket, there was notice and opportunity for the public to comment. The upgraded station's community, Oakdale, was located some 80 miles from Campti, Louisiana (the conflicting proposal) and Coushatta, Louisiana (the non-conflicting proposal); the latter two communities were a few miles apart.

(e) In Kingston, Tennessee, et al, 2 FCC Rcd 3589 (MM Bur. 1987), the initial petitioner withdrew, a counterproposal was unacceptable and the proceeding was terminated. One of the parties attempted to file a new petition in the same proceeding;

instead, the Commission established a new docket for consideration of that petition, i.e. with public notice and opportunity to comment. The contending communities were Kingston, Tennessee and Someset, Kentucky, approximately 75 miles apart.

(f) In Cazenovia, New York, et al, 2 FCC Rcd 1169 (MM Bur. 1987), the main proceeding involved various proposals to deal with up-state New York upgrades and allotments. A counterproposal regarding Vermont allotments having no conflict with the main proceeding was accepted by the Commission as a separate petition for rulemaking, with public notice and opportunity to comment.

19. To be sure, the Commission and its staff have room for some flexibility to adapt their processes as reflected in these cases in order to resolve allotment issues that arise in the day to day work of the agency. However, the Joint Parties are not seeking such operational flexibility. They are asking the Commission to reconsider its refusal to approve a blockbuster multi-state multi-party counterproposal, after the parent allotment proceeding has cratered, without putting the residue of that proceeding out for legitimate public notice, as it has consistently done in the day-to-day flexible administration of the FM allotment program illustrated in the cases cited by the Joint Parties and reviewed above.

B.
The Joint Parties' appeal for sympathy is neither persuasive nor a lawful basis for such largess
(¶¶6-7)

20. The Joint Parties cry for leniency because the proceeding has taken two and one half years and it would be unfair to ask them to undertake another allotment proceeding, this time with valid and efficacious public notice. To draw upon a hackneyed analogy, this is like a person who kills his parents asking for mercy as an orphan.

21. We start with the humongous nature of the counterproposal itself. The Joint Parties spent some three years dating back to 1998 in constructing the counterproposal, which had the objective of creating some four new major market radio facilities worth untold millions of dollars. One of the reasons this proceeding took a long time was that it was BIG - and that wasn't because the FCC required it to be big or suggested that it should be big. Rather, the proceeding was BIG because the Joint Parties chose, for their own purposes, to make it that way. And the natural and foreseeable consequence of the size of the load they dumped on the Commission was that it would take considerably longer for the Commission to process that load - which is precisely what happened.

22. Next, we consider the complexities of the structure. The complexities were enormous. There were many linear inches of pleadings filed with the counterproposal including engineering and allotment exhibits that had to be studied and processed.

There were resulting time consuming burdens on the part of all parties and the Commission's staff. There were also mistakes and glitches to be dealt with, not the least of which was the Joint Parties' proposal to construct a tower in the middle of the Colorado River.

23. Then, there was the arrogant and delaying conduct on the part of the Joint Parties themselves. For example, with regard to the Krim matter, the record reflected that the Joint Parties had entered into a settlement agreement involving a substantial amount of money. The Commission wanted to review the document, and requested that the Joint Parties furnish it. They stonewalled the Commission, delaying matters for an extended period of time, and then finally told the Commission to go stuff it.

24. A subject, which the Joint Parties don't like to hear us raise, is the bona fides of the Quanah petition in relation to the Joint Parties' counterproposal. We can say without rational fear of contradiction that the radio station in Elk City, Oklahoma, near the Texas panhandle, didn't read the public notice of a proposal to allot channel 233 at Quanah, just down the road apiece, and say, by golly, we would like to have channel 233 rather than 232 in Elk City -- notwithstanding their parity in terms of power and coverage -- and commence to prepare a counterproposal in accordance with its rights under the FCC's counterproposal rule and within the two month timetable specified in the Quanah rulemaking notice.

25. To the contrary, the Joint Parties had contracted with the Elk City station to reimburse it for expenses in making the change from channel 232 to 233 that conflicted with the Quanah petition and had been otherwise working on their project for years dating back to 1998. Piggybacking their massive allotment plan on the singleton Quanah petition as a counterproposal gave them squatters rights as the successor in interest to the Quanah petitioner should she subsequently withdraw from the proceeding. That is precisely what happened, in relatively short order, and the cooperating petitioner didn't even ask for any money to go away.

26. The circumstances obviously and strongly suggest all of this was not some marvelous coincidence and that there was some collusion between the petitioner and the Joint Parties or representatives of the petitioner and the Joint Parties. We raised the matter, the petitioner did not respond, the Joint Parties denied any collusion and the Commission has taken the position that in the absence of any first hand documentation to support our speculation, the FCC would not make further inquiry. Of course we have no documentation; we have no subpoena power or the equivalent in agency regulatory power. But the Commission does.

27. The Commission's pat response to the efforts of private attorneys general that they must provide first hand documentation before FCC will take any action no matter how suspicious the circumstances may be is a tired one. If the Commission has any

interest in protecting the integrity of its allotment rules and policies, it should request copies of any and all documents including correspondence, email and telephone records directly involving the petitioner and the Joint Parties or indirectly involving the petitioner and Joint Parties through attorneys, engineers or other intermediaries.

28. And if anyone declines to produce documents in his, her or its possession -- as the Joint Parties repeatedly refused to provide a copy of Krim settlement agreement -- the Commission should invoke the presumption that the documents in the private possession of the respondents would, if produced, be unfavorable to their cause. E.g., Interstate Circuit, Inc. v. U.S. 306 U.S. 208 (1938); Mid-Continent Petroleum Corporation v. Keen, 157 F.2d 310, 315 (9th Cir. 1946); Washoe Shoshone Broadcasting, 3 FCC Rcd 3948, 3953 (Rev. Bd. 1988).

IV.
Additional allotment deficiencies

29. There are allotment deficiences in addition to those set forth in the Commission's Report and Order and those conceded by the Joint Parties.

30. The Joint Parties concede that the "KLAK Alternative" of their counterproposal was technically defective due to the short-spacing between the proposed substitution of channel 230C1 at Archer City, Texas, and the then-pending application for Station KICM, Krum, Texas. This was but one of a number of defects with the counterproposal, not the least of which was the refusal of the Joint Parties to produce the underlying agreement

between themselves and AM & FM Broadcasting. Now, however, the Joint Parties want the Commission to believe that the "KVCQ Alternative," when filed within their counterproposal, was technically correct. This is not the case either.

31. The "KVCQ Alternative" is short-spaced to Evant, Texas. The Commission's policy is not to accept rulemaking proposals that are contingent upon the licensing of facilites set forth in an outstanding construction permit or are dependent upon final action in another rulemaking proceeding. In the recently issued Report and Order for Ruston, Louisiana, MM Docket No. 01-19, the Commission dismissed the Ruston Broadcasting Company counterproposal because, on the date it was filed, it was contingent on the dismissal of a previously filed counterproposal.

32. The same operative facts exist here. At the time of filing, the KVCQ Alternative's proposed allotment of 243C2 at Lago Vista was short-spaced by 49 kilometers to a pending counterproposal filed by Evant Radio Company in MM Docket No. 99-358. On October 10, 2000, the same day the Quanah counterproposal was filed by the Joint Parties, Evant Radio Company filed a request to withdraw its Evant counterproposal. However, the Commission did not issue a Report and Order in MM 99-358 until July 6, 2001. Therefore, when the KVCQ Alternative was filed within the Quanah counterproposal on October 10, 2000, it was contingent upon the dismissal of the Evant Radio Company counterproposal. This dismissal was not issued until almost nine

months later.

33. The "KVCQ Alternative is short-spaced to KAYG. The proposed substitution of channel 256A for channel 243A at Ingram, Texas, was short-spaced by 30 kilometers to station KAYG, channel 256A at Camp Wood, Texas. At page 15 of the Quanah counterproposal Engineering Statement, the Joint Parties said "channel 256A is available for Allotment at Ingram, since channel 256A was deleted at Camp Wood, Texas in MM Docket No. 99-214." The Joint Parties did not disclose to the Commission that such deletion has never taken place.

34. In the Report and Order for MM Docket No. 99-214, the Commission said "the construction permeit for La Radio Cristiana Network, Inc. for station KAYG, Camp Wood, Texas, IS MODIFIED to specify operation on channel 251C3 in lieu of channel 256A, subject to the following conditions:"

> "Within 90 days of the effective date of this order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility."

and

> "As a result of this proceeding, La Radio Cristina Network, Inc., permittee of station KAYG, is required to submit a rule making fee in addition to the fee required for the application to effectuate the upgrade at Camp Wood, Texas."

We request that official notice be taken of the Commission's records that neither of those conditions has ever been met and that station KAYG is still broadcasting on channel 256A.

35. There was never a "clean" daisy chain of title from the Quanah petition to either the "KLAK Alternative" or the "KVCQ Alternative", hence to either or both components of the counterproposal. In order for the Joint Parties' counterproposal to be legitimate, it must at some point conflict with the original petition for rulemaking in this case. The "KVCQ Alternative" that is now being put forth by the Joint Parties is the southern portion of the daisy chain which begins in the North at Quanah. Within the Joint Parties' counterproposal, the only conflict with Quanah was in the northern part of the daisy chain, i.e., "KLAK Alternative." Sans the "KLAK Alternative" that is now abandoned by the Joint Parties, the southern part of the daisy chain, i.e., the "KVCQ Alternative," does not conflict with Quanah. Moreover, even as to the northern part of the daisy chain, in the Joint Parties' Petition, they concede that their "KLAK Alternative" was defective from the outset.

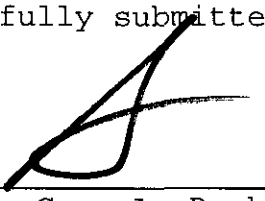
36. So, there was never any "clean" daisy chain of title from the Quanah rulemaking petition to either the northern or southern components or the entirety of the Joint Parties' massive counterproposal. In truth and in fact, there is not now and there never was any legitimate allotment package for the Commission to consider.

V.
Conclusion

37. For the foregoing reasons as well as those stated in

the Commission's Report and Order in this matter, the Joint Parties' Petition should be denied.

Respectfully submitted,



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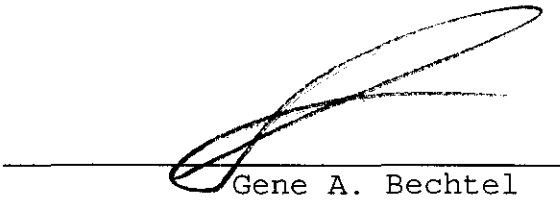
June 30, 2003

CERTIFICATE OF SERVICE

I certify that on this 30th day of June, 2003, I have caused copies of the foregoing OPPOSITION OF CHARLES CRAWFORD TO PETITION FOR PARTIAL RECONSIDERATION AND REQUEST FOR EXPEDITED ACTION to be placed in the United States mails, postage prepaid, first class, addressed to the persons set forth on the attached "Quanah Service List".



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